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No. 90-993

In the
Supreme Court of the United States
October Term, 1990

CSX TRANSPORTATION, INC.,
Petitioner,

vs.

STEPHEN RASTALL and TIMOTHY GOWDEY,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

REPLY OF PETITIONER CSX TRANSPORTATION, INC. TO RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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I. The Decision Below Is Unprecedented And Irreconcilable With The Jurisdictional Limitations Imposed By The Railway Labor Act

As CSX Transportation, Inc. ("CSXT") showed in its Petition, by interpreting CSXT's collective bargaining agreements with its unions to permit CSXT's Canadian employees to pursue breach of contract claims in state court actions, the court below violated the restriction on court jurisdiction over "minor" disputes imposed by the Railway

Labor Act ("RLA").[1] The court below found this restriction -- which it acknowledged would apply had the suit been brought by U.S. employees -- to be inapplicable on the grounds that Respondents, who live and work in Canada, are not subject to the RLA. Respondents assert that in ruling that the RLA does not have extraterritorial application, the court of appeals "followed and applied a consistent line of court decisions going back to 1951." Resp. Br. at 6.

Contrary to the premise underlying Respondents' assertion and the court of appeals decision, this case does not involve extraterritorial application of the RLA. The issue before the court of appeals involved a dispute over the meaning of grievance provisions in federal[2] collective bargaining agreements between a U.S.-based railroad and unions which represent that railroad's employees -- a classic "minor" dispute that this Court's decisions make clear is committed to the exclusive jurisdiction of adjustment boards. Where Respondents live or work is irrelevant to the applicability in a U.S. court of the RLA's jurisdictional limitations. Only if *an adjustment board* finds that the collective agreements and past practices permit

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[1]This Court's decisions, without exception, establish that when presented with a labor dispute in the railroad industry, the resolution of which requires the interpretation of a collective bargaining agreement or examination of the parties' past practices, a court's role is limited to determining whether the asserted contractual basis for the action being challenged is "arguably justified" by the terms of the agreement or past practice. *E.g., Consolidated Rail Corp. v. RLEA*, 109 S. Ct. 2477, 2482, 2484, 2485 (1989) ("*Conrail*"). If a court finds that the action is arguably justified by the agreement or past practice, it has no jurisdiction over the dispute and *must* defer to the compulsory arbitration procedure specified by the Act, 45 U.S.C § 153. *Conrail*, 109 S.Ct. at 2480, 2484.

[2]As this Court has held, railroad industry collective bargaining agreements are federal contracts, not common law contracts. *IAM v. Central Airlines, Inc.*, 372 U.S. 682 (1963). Whatever the citizenship of the affected employees, disputes over the interpretation of such contracts are committed to the exclusive jurisdiction of adjustment boards. Respondents, who are claiming rights in the United States under railroad industry agreements, cannot be permitted to ignore the exclusively federal character of those agreements in attempting to enforce their alleged rights.

Canadian employees to bypass the agreements' arbitration procedures will the state court have jurisdiction to decide the underlying dispute over the form of payment for CSXT's Canadian employees.[3]

The cases cited by Respondents and the court of appeals are not conclusive on the issue presented here. Three of the six cases did not involve the question of jurisdiction to interpret collective bargaining agreements.[4] In *Vollmar v. CSX Transportation, Inc.*, 705 F. Supp. 1154 (E.D. Va. 1989), *aff'd on other grounds*, 898 F.2d 413 (4th Cir. 1990), the court merely stated in dicta that the RLA does not have extraterritorial application. This statement did not provide a basis for its decision or that of the Fourth Circuit on appeal. In *General Committee of Adjustment, United Transportation Union v. Burlington Northern, Inc.*, 102 L.R.R.M. (BNA) 2869 (D. Minn. 1979), *aff'd on other grounds*, 620 F.2d 161 (8th Cir.), *cert. denied*, 449 U.S. 826 (1980), the court held only that the RLA's dispute resolution procedures could not be imposed as a matter of law on disputes arising from work performed solely in Canada. In an earlier opinion, the court of appeals had left open the question whether such jurisdiction could be established by custom and practice. *General Committee of Adjustment v. Burlington Northern, Inc.*, 563 F.2d 1279, 1286 (8th Cir. 1977). Although the district court in dicta opined that the jurisdiction of a public law board could not extend to Canadian

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[3]As noted in CSXT's Petition, the National Railroad Adjustment Board has already issued decisions rejecting the claims of CSXT's Canadian employees in two crafts that their agreements required that they be paid in the equivalent of U.S. dollars. Pet. at 24. Contrary to Respondents' suggestion that inconsistency in NRAB decisions concerning its jurisdiction over claims of Canadian employees undercuts CSXT's position, any inconsistency only points up the need for this Court to resolve the issue.

[4]*Air Line Dispatchers Ass'n v. National Mediation Board*, 189 F.2d 685 (D.C. Cir.), *cert. denied*, 342 U.S 849 (1951); *Air Line Stewards & Stewardesses Ass'n v. Northwest Airlines, Inc.*, 267 F.2d 170 (8th Cir.), *cert. denied*, 361 U.S. 901 (1959); *Air Line Stewards & Stewardesses Ass'n v. Trans World Airlines, Inc.*, 173 F. Supp. 369 (S.D.N.Y.), *aff'd*, 273 F.2d 69 (2d Cir. 1959), *cert. denied*, 362 U.S. 988 (1960).

employment, the court of appeals did not reach the issue on appeal, affirming only on the grounds that the district court's finding that the evidence did not support the claim to a binding past practice was not clearly erroneous. 620 F.2d at 163, 164 n.4.

In *Independent Union of Flight Attendants v. Pan American World Airways*, 132 L.R.R.M. (BNA) 2520 (N.D. Cal. 1989), *aff'd*, ___ F.2d ___ [1991 U.S. App LEXIS 206] (9th Cir. Jan. 14, 1991), the court held that it did not have jurisdiction to compel arbitration of a dispute over the applicability of a collective bargaining agreement to foreign operations. As suggested by the dissent to the Ninth Circuit's affirmation of that decision, however, this result loses sight of the fact that the disputes arise out of a collective bargaining agreement negotiated and executed in the United States, the enforcement of which is being sought in the United States. 1991 U.S. App. LEXIS 206, at 11 (Nelson, J. dissenting). Moreover, Respondents here do not claim that CSXT's collective bargaining agreements are not applicable to them; indeed, the applicability of the agreements is central to their underlying breach of contract cause of action.

Contrary to Respondents' claim, none of this Court's decisions on the extraterritorial effect of other federal labor statutes, cited by Respondents at p. 8 of their Brief, provide support for the result reached by the court below. The cited cases hold only that federal labor laws do not apply to disputes involving foreign vessels employing foreign seamen; none involved a dispute arising under a federal contract which such seamen were seeking to enforce.

In sum, the question whether adherence to the Act's jurisdictional restrictions by a U.S. court in the circumstances of this case amounts to "extraterritorial" application of the RLA presents an issue of first impression requiring this Court's attention because of the irreconcilability of the result reached by the court below with well-established RLA precedent.

II. The Decision Of The Court Below Is Significant And Warrants Review

Respondents' attempt to dismiss the conflict between the court of appeals' decision and federal labor policy is transparently unavailing. Their reliance on *Groves v. Ring Screw Works*, 111 S. Ct. 498 (1990), for the proposition that federal labor law "does not preclude parties from providing for non-arbitral means of resolving contract disputes," Resp. Br. at 10, ignores the fact that this case, unlike *Groves*, arises under the RLA, which *mandates* arbitration. *Conrail*, 109 S. Ct. at 2480. Respondents' characterization of CSXT's position as being that the court below "violated federal policy by the very act of examining and interpreting the provisions of the collective bargaining agreements," Resp. Br. at 10, is entirely correct: this Court has expressly held that when presented with a dispute requiring interpretation of a collective bargaining agreement, as does this dispute over the meaning of grievance provisions, a court's role is limited to determining whether the challenged action is "arguably" supported by the agreement or past practice. *Conrail*, 109 S. Ct. at 2482.

Respondents' attempt to defend the court of appeals' "careful analysis" of the Canada Labour Code is similarly unavailing. Resp. Br. at 10. The court's conclusion that the Labour Code does not require arbitration when the agreement provides for another means of dispute resolution ignores the fact that under Canadian labor law, as under U.S. labor law, collective bargaining agreements are not common law contracts. Accordingly, the reference in the Code to "arbitration or otherwise" *cannot* refer to common law enforcement actions like that approved by the court below. It also ignores the fact that under Canadian labor law, as under U.S. labor law, the past practices of the parties are relevant to the determination of the meaning of disputed contract provisions. Given the unquestioned consistent past practice of the parties in this case to send all unresolved contract disputes to arbitration, it is inconceivable that the Canadian courts would permit a common law action to resolve Respondents' contract claims. As noted by CSXT in its Petition, the effect of the court of appeals ruling is to permit Respondents to bring a lawsuit that

they could not bring in their own country, and which U.S. employees could not bring here.

Respondents' attempt to downplay the importance of this decision to the railroad and airline industries is not persuasive.[5] The language in CSXT's collective bargaining agreements that the court interpreted to permit employees to bypass arbitration originated in a 1954 "national" collective bargaining agreement, which applied to all major U.S. railroads and rail unions.[6] All of the U.S. railroads with Canadian operations still have that language in one or more of their collective bargaining agreements to this day.[7] Respondents' glib assertion that CSXT is "free" at any time to seek revision of the provision in no way reduces the need for review of this ruling. As this Court has noted, the dispute resolution procedures under the RLA are "purposely long and drawn out", *Brotherhood of Railway, Airline & Steamship Clerks v. Florida East Coast R.R.*, 384 U.S. 238, 246 (1966), and "almost interminable," *Detroit & Toledo Shore Line R.R. v. United Transportation Union*, 396 U.S. 142, 149 (1969). It will be years at best before CSXT would be able to obtain relief from this ruling through negotiation, and there is

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[5]In an attempt to belittle CSXT's representations as to the consequences of the ruling below, Respondents assert that the courts have refused to apply the RLA extraterritorially "for 40 years without any discernable adverse effects on labor relations in the railroad industry." Resp. Br. at 11. The absence of any disruption, however, is due to the fact that the consistent practice at CSXT and in the industry has been to arbitrate disputes involving Canadian employees, not to litigate them in the courts. Of the six cases that deal with the extraterritoriality issue, only two arose in the railroad industry, and the earliest of the two was first decided in 1977.

[6]*See* Article V of the Agreement And Memorandum Dated August 21, 1954 Between Railroads Represented By The Eastern, Western, And Southeastern Carriers' Conference Committees And The Employees Of Such Railroads Represented By The Employees' National Conference Committee, Fifteen Cooperating Railway Labor Organizations.

[7]Similar provisions are present in the labor agreements of Consolidated Rail Corporation, Norfolk & Western Railway, and Burlington Northern Railroad. These agreements are on file with the National Mediation Board pursuant to 45 U.S.C. § 155 Third (e).

no certainty that the necessary change would be agreed to. Furthermore, CSXT will surely have to give something up in order to regain through bargaining what it believes the agreements already provide. In the meantime, CSXT will continually be at the mercy of potential conflicts between decisions of adjustment boards and decisions of the sundry state and federal courts over the meaning and application of its collective bargaining agreements, while its Canadian employees will be free to shop for a favorable forum in which to seek relief.

III. Review Of The Decision Below At This Time Is Necessary In Order To Preserve CSXT's Rights Under The RLA

Respondent's characterization of the court of appeals decision as interlocutory and therefore not ripe for review is erroneous. This Court has deemed it appropriate to hear appeals from state courts where the federal issue on which appeal is sought has been finally decided even though further proceedings in the state court might be necessary, if the party seeking review might prevail on state law grounds, and if reversal of the state court on the federal issue would preclude further proceedings. *Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 482-83 (1975). "In these circumstances, if a refusal immediately to review the state-court decision might seriously erode federal policy, the Court has entertained and decided the federal issue . . . ." *Id.* at 483. *See Construction & General Laborers' Union v. Curry*, 371 U.S. 542, 550 (1963) (postponing review of preemption claim would "seriously erode" the national labor policy requiring certain disputes to be heard by the NLRB rather than by state courts). The circumstances of this case similarly warrant immediate review. The whole point of this case is that Respondents' grievances must be resolved through arbitration, not through litigation. The RLA commits contract interpretation issues to arbitration because Congress believed that arbitrators' familiarity with the industry and its customs and practices would result in decisions more attuned to the parties' needs and more conducive to labor peace than would decisions obtained from the courts. These benefits will be irretrievably lost if review of this decision is delayed until after the proceedings on remand are completed.

CONCLUSION

For the reasons stated herein and in CSXT's Petition, CSXT respectfully requests that a writ of certiorari be issued to the District of Columbia Court of Appeals.

Respectfully submitted,

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